

HON. BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED FINANCIAL CASUALTY
COMPANY,

Plaintiff,

v.

AMAN EXPEDITE, LLC; VITALI
KONKO; the ESTATE OF DMYTRO
PRONIN; MALIK TRUCKS LLC; and
MALIK KOSSUNOV

Defendants,

AND

CHAD HORNER, as Administrator or the
Estate of Dmytro Pronin,
Crossclaim & Third-Party
Plaintiff,

v.

AMAN EXPEDITE LLC; and VITALII
KONKO,

Crossclaim Defendants,

AND

DAIMLER TRUCKS NORTH AMERICA,
LLC; SELECTTRANSPORTATION
RESOURCES (D/B/A HOUSTON
FREIGHTLINER); PITREMODELING
INC; RALF AND TRANSPORTATION
INC; PETRO FEDELESH; MALIK
TRUCKS LLC; MALIK KOSSUNOV; and
FORCE TRANS INC,

Third-Party Defendants.

NO. 2:23-cv-00587-BJR

**ORDER GRANTING
DAIMLER TRUCKS NORTH
AMERICA, LLC'S MOTION
TO DISMISS**

I. INTRODUCTION

This lawsuit arises from the tragic death of Dmytro Pronin who was killed in a traffic accident between two freightliners on October 1, 2022. Currently before the Court is Third-Party Defendant Daimler Trucks North America, LLC's ("DTNA") motion to dismiss pursuant to Fed. Rule Civ. P. 12(b)(6), which is opposed by Third-Party Plaintiff the Estate of Dmytro Pronin ("the Estate"). Dkt. Nos. 121, 126. Having reviewed the motion, response, and reply thereto, as well as the record of the case and the relevant legal authority, the Court will grant the motion with leave to amend. The reasoning for the Court's decision follows.¹

II. FACTUAL BACKGROUND

In 2021, DNTA designed and manufactured a freightliner box truck ("the Freightliner") that was purchased by SelecTransportation Resources, LLC d/b/a/ Houston Freightliner, Inc. ("Houston Freightliner") and sold to Aman Expedite, LLC ("Aman Expedite"). Although DNTA had been offering forward collision warning, automatic emergency braking, and active brake assist technologies as optional features on its trucks, the Freightliner was not equipped with these features.

In August 2021, after it purchased the Freightliner from Houston Freightliner, Aman Expedite contracted with Petro Fedelesh, PITRemodeling Inc, and/or Ralf and Transportation Inc. (collectively "PIT") to construct a sleeper berth in the back of the Freightliner. The Estate alleges that the Freightliner was "originally manufactured for day

¹ Plaintiff United Financial Casualty Company ("United Financial") originally instituted this lawsuit in April 2023 seeking a declaratory judgment that it does not owe insurance defense or indemnity coverage obligations for potential claims arising from the accident. However, the lawsuit has since expanded to include multiple cross and third-party claims including, relevant to the instant motion, the Estate's third-party claims against DNTA. The underlying insurance claims are not relevant to the instant motion and will not be discussed here.

1 use and had nowhere in the crash-worthy passenger compartment to install a sleeper
2 berth.” Dkt. No. 78 at ¶ 72. The Estate claims that PIT “cut a hole in the rear of the cab’s
3 passenger safety compartment, through into the cargo box” and “used wood to frame out”
4 a berth “in the area at the front of the cargo box, just behind the passenger safety
5 compartment.” *Id.* at ¶ 74 a.- b. The Estate further alleges that PIT failed to use “high-
6 strength steel reinforcements to keep the sleeper berth enclosed and intact” or “connected
7 to the passenger safety compartment in the event of an accident.” *Id.* at ¶ 74 f. – g. Nor
8 did it install restraints to protect someone sleeping in the berth in the event of an accident.
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10 On October 1, 2022, Vitali Konko was driving the Freightliner on Highway 70 in
11 Silverton, Colorado, while Mr. Pronin was riding in the sleeping berth. The Estate alleges
12 that Mr. Konko was driving around 50-55 mph when he saw a semi-truck in the lane in
13 front of him going very slowly with its hazard lights on. The Estate further alleges that
14 instead of applying the Freightliner’s brakes, Mr. Konko decided to change lanes, and
15 looked over his shoulder to check for traffic. However, when he looked back towards the
16 front, he realized that the semi-truck was too close, so he swerved but was unable to
17 avoid hitting the semi-truck. The Estate claims that “[t]he impact was not particularly
18 violent, as highway crashes go” and it “did not cause any intrusion into the
19 [Freightliner’s] passenger safety compartment.” Dkt. No. 78 at ¶¶ 117-118. In fact, the
20 Estate alleges, the Freightliner’s “build [*sic*]-to-regulation passenger safety compartment
21 proved more than adequate to remain intact and protect its occupants” *Id.* at ¶ 119.
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23 However, the same cannot be said for the recently installed sleeper berth. The
24 Estate alleges that “the sleeper berth was completely destroyed” in the accident. *Id.* at ¶
25 120. Specifically, the berth was torn from the rear wall of the passenger compartment,
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1 thrown rearward, and parts of the berth were scattered “throughout the crash site.” *Id.* at ¶
2 120 c. The Estate alleges that “[a]s a result of the [crash] impact—and especially the
3 sleeper berth’s lack of crashworthiness—Mr. Pronin was violently thrown from where he
4 was sleeping ... and found lying face-up, covered in debris from the implosion of the
5 cargo box, with his mouth covered in blood and a pool of blood under his head.” *Id.* at ¶¶
6 121-122. He was pronounced dead at the scene. Mr. Konko was not injured in the
7 accident and the Estate claims that Mr. Pronin “would likely have remained uninjured or
8 only minorly injured if the sleeper berth had been built as required for a passenger safety
9 compartment.” *Id.* at ¶ 124.

11 As stated above, this lawsuit was originally brought as an insurance coverage
12 dispute, but the Estate has filed multiple cross and third-party claims against several
13 parties, including DNTA, Houston Freightliner, PIT, Aman Expedite, Mr. Konko, and
14 several other entities and individuals. Relevant to the instant motion, the Estate alleges
15 that the Freightliner was defective because DNTA failed to equip the truck with forward
16 collision warning, automatic emergency braking, and/or active brake assist technologies,
17 and this defect was the proximate cause of Mr. Pronin’s death. The Estate brings strict
18 products liability and a wrongful death claims against the truck manufacturer. DNTA
19 moves to dismiss these claims pursuant to Fed. Rule Civ. P. 12(b)(6).

21 III. STANDARD OF REVIEW

22 To survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss, a complaint must state a
23 cognizable theory, and must contain sufficient factual matter to “state a claim to relief
24 that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal
25 quotation marks omitted); *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035,
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1 1041 (9th Cir. 2010). The plaintiff must plead sufficient “factual content that allows the
2 court to draw the reasonable inference that the defendant is liable for the misconduct
3 alleged.” *Iqbal*, 556 at 678. In considering a motion to dismiss, the Court must take all
4 factual allegations in the complaint as true and construe them in the light most favorable
5 to the plaintiff. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012).

7 IV. DISCUSSION

8 DNTA argues that the Estate’s products liability and wrongful death claims
9 against it must be dismissed as a matter of law because the Estate has failed to plausibly
10 allege that a product designed, manufactured, and/or sold by DTNA was the proximate
11 cause of Mr. Pronin’s death. To the contrary, DTNA argues, the third-party complaint
12 expressly alleges that Mr. Pronin’s death was caused by the shoddily constructed sleeper
13 berth that was added to the Freightliner *after* it left DNTA’s control. Thus, it is entitled to
14 dismissal from this lawsuit because it is not the manufacturer of the “relevant product”
15 that injured Mr. Pronin.

17 The Washington Products Liability Act (“WPLA”) is the exclusive remedy for
18 product liability claims under Washington law. *Nelson v. Sandvik Mining and Const.,*
19 *Inc.*, 2012 WL 6056547, *2 (W.D. Wash. Dec. 6, 2012). Under the WPLA, a
20 manufacturer may be liable for the construction or negligent design of the “relevant
21 product” if that product is not reasonably safe when it left the manufacturer’s control and
22 it was the proximate cause of the plaintiff’s injury. RCW 7.72.010(2); RCW 7.72.030(2).
23 The WPLA defines the “relevant product” as “that product or its component part or parts,
24 which gave rise to the product liability claim.” RCW 7.72.013(3). Thus, courts applying
25 Washington law have determined that where a component of a whole product can be
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1 identified as the cause of the injury, that component, rather than the product as a whole, is
2 the “relevant product” for purposes of the WPLA. *See, e.g., Parkins v. Van Doren Sales,*
3 *Inc.* 724 P.2d 389, 393 (Wash. App. 1986) (“If we consider the entire [pear processing]
4 assembly as a unit and inquire whether there was liability as a component manufacturer
5 or supplier, the ‘relevant product’ is the component if the component gave rise to the
6 product liability claim” and because the plaintiff was injured by particular parts, “as
7 opposed to other equipment which made up the pear processing unit, those parts
8 constitute ‘relevant’ products for the purposes of the [WPLA]” rather than the pear
9 processing line as a whole); *Nelson*, 2012 WL 6056547, *2 (W.D. Wash. Dec. 6, 2012)
10 (concluding that two optional parts added to a drill were the “relevant products” under the
11 WPLA as opposed to the drill itself); *Progressive Northern Ins. Co. v. Fleetwood*
12 *Enterprises, Inc.*, 2006 WL 1009334, *4 (W.D. Wash. April 14, 2006) (noting that
13 “where a particular component can be identified as giving rise to the claim, that
14 component, rather than the end product as a whole, may be considered the relevant
15 product” and thus concluding that the chassis, engine, or faulty wiring were the “relevant
16 products” under the WPLA as opposed to the overall motor home). Moreover, these same
17 courts have held that where a manufacturer had no role in the manufacture and/or
18 incorporation of the defective “relevant product” that caused the injury into the whole
19 product, that manufacturer is not liable for the claimant’s injury. *See Nelson*, 2012 WL
20 6056547, *2 (W.D. Wash. Dec. 6, 2012) (dismissing claims against the drill manufacturer
21 that did not manufacture or install optional parts installed on drill); *Fleetwood*
22 *Enterprises, Inc.*, 2006 WL 1009334, *4 (W.D. Wash. April 14, 2006) (dismissing claims
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1 against motor home manufacturer that did not install engine, chassis, or faulty wiring in
2 motor home).

3 DNTA argues that like the forgoing manufacturers, it too must be dismissed from
4 this lawsuit because, accepting the allegations in the third-party complaint as true as the
5 Court must do at this stage of the litigation, Mr. Pronin died due to the shoddy
6 construction of the sleeper berth that was added to the Freightliner after the truck left
7 DNTA's control, as opposed to any defect in the Freightliner itself. This Court agrees
8 with DNTA. The third-party complaint unequivocally alleges that: (1) the accident was
9 not "particularly violent"; (2) the impact did not "cause any intrusion into the
10 Freightliner['s] passenger safety compartment"; (3) the Freightliner's passenger safety
11 compartment as constructed "proved more than adequate to remain intact and protect its
12 occupants"; (4) Mr. Konko who was riding in the passenger safety compartment "was
13 uninjured" in the accident; (5) Mr. Pronin was in the sleeper berth at the time of the
14 accident; (6) Mr. Pronin was "violently thrown" during the accident "especially" because
15 the sleeper berth was not "crashworth[y]"; and (7) Mr. Pronin "would likely have
16 remained uninjured or only minimally injured" if the sleeper berth had been properly
17 constructed. Dkt. No. 78 ¶¶ 117-124. Thus, based on the Estate's own allegations in the
18 third-party complaint, the "relevant product" that caused Mr. Pronin's injuries is the
19 after-market sleeper berth that was added to the truck *after* it left DNTA's control, not the
20 Freightliner itself. Because DNTA did not manufacture or install the sleeper berth, it is
21 not liable for Mr. Pronin's injuries.

22 The Estate attempts to avoid this outcome by arguing that the Freightliner, as a
23 whole, was defective because DTNA failed to equip the truck with automatic emergency
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1 braking technology. According to the Estate, the lack of an automatic emergency braking
2 system “directly and proximately caused” Mr. Pronin’s death because the accident would
3 not have happened had the Freightliner been equipped with this technology. However,
4 this is not what the third-party complaint alleges. While the third-party complaint does
5 allege that the accident would not have occurred but-for the fact that the Freightliner was
6 not equipped with automatic braking technology, it does not allege that the absence of
7 this technology was the proximate cause of Mr. Pronin’s death. Instead, the third-party
8 complaint alleges that Mr. Pronin died because he was “violently thrown” during the
9 accident “especially” because the sleeper berth was not “crashworthy[y]” and further
10 alleges that Mr. Pronin “would likely have remained uninjured” if he was not in the
11 sleeper berth at the time of the accident. Dkt. No. 78 at ¶¶ 117-124. The remaining facts
12 of the third-party complaint as alleged bear this out: Mr. Konko was in the *same* accident
13 in the *same* Freightliner with the *same* absence of automatic braking technology, yet he
14 walked away from the accident unscathed. The only difference is that Mr. Konko was
15 riding in the part of the Freightliner that had not been modified after leaving DNTA’s
16 control. Indeed, the third-party complaint alleges that the Freightliner’s “passenger safety
17 compartment”—where Mr. Konko was sitting at the time of the accident—“proved more
18 than adequate to remain intact and protect its occupants” *Id.* at ¶ 119. Stated
19 differently, the third-party complaint alleges that both men were involved in the same
20 accident involving the same allegedly defective Freightliner, but only the man in the
21 after-market sleeper berth suffered any harm. Mr. Konko remained perfectly safe in the
22 part of the Freightliner that remained as it was when it left DNTA’s control. Thus, Mr.
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1 Pronin's death cannot be reasonably attributed to the lack of automatic braking on the
2 Freightliner.¹

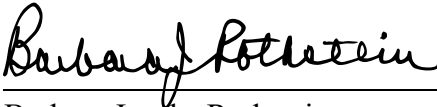
3 The Estate also argues that Washington courts have endorsed a lower standard for
4 causation in products liability cases. The Estate is correct that Washington courts have
5 recognized limited circumstances in which a plaintiff must only show that a
6 manufacturer's conduct was among other sources of harm, known as the "substantial
7 factor" standard. However, these same courts have made clear that the "change from the
8 'but-for' test to the substantial factor test is normally justified only when a plaintiff is
9 unable to show that one event alone was the cause of the injury." *Roemmich v. 3M*
10 *Company*, 509 P.3d 306, 314 (Wash App. 2022). Thus, Washington courts have applied
11 the substantial factor standard in cases involving multiple sources of toxic materials such
12 as asbestos where a plaintiff cannot trace the asbestos from a certain source to their
13 mesothelioma diagnosis. In those cases, the substantial factor test requires a plaintiff to
14 simply show that a defendant contributed to the "total cloud" of toxic materials to which
15 the plaintiff was exposed. *Id.* quoting *Mavroudis v. Pittsburgh-Corning Corp.*, 935 P.2d
16 684 (Wash. App. 1997). Here, there is no cloud of toxic materials or other circumstances
17 robbing the Estate of the ability to establish but-for causation against the cause of Mr.
18 Pronin's death. The Estate has clearly alleged that the after-market sleeper berth caused
19 the harm at issue in this case.
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25 ¹ The third-party complaint is replete with allegations that DNTA understood and acknowledged that
26 technologies such as forward collision warning, automatic emergency braking, and/or active brake assist
can dramatically decrease the risk to those who use this country's roadways. That very well may be true,
but the facts as alleged in this case establish that such technologies were not necessary to prevent the
injuries suffered by Mr. Pronin in this particular accident.

V. CONCLUSION

For the foregoing reasons, the Court concludes that the Estate's claims against DNTA fail as a matter of law and must be dismissed. The Estate requests leave to amend the third-party complaint in the event that this Court grants DNTA's motion to dismiss and the Ninth Circuit has instructed that such leave shall be freely granted. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Therefore, the Court grants the Estate's request; the Estate shall file amended claims against DNTA, should it choose to do so, no later than September 18, 2024.

Dated this 30th day of August 2024.



Barbara Jacobs Rothstein
U.S. District Court Judge